

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ANTHONY LEO,)
)
Petitioner,)
)
v.) C.A. No. 04-11006-JLT
)
COMMONWEALTH,)
)
Respondent.)

MEMORANDUM AND ORDER

For the reasons set forth below, the Court grants petitioner's Motion for Leave to Appeal In Forma Pauperis (Docket No. 65).

BACKGROUND

On July 12, 2005, petitioner filed his Notice of Appeal of the denial of his habeas petition, see Docket No. 60, and the United States Court of Appeals for the First Circuit assigned it No. 05-2099. See Docket No. 64. Petitioner filed a motion for certificate of appealability, see Docket No. 61, and a motion for leave to appeal in forma pauperis. See Docket No. 65. By Order dated July 28, 2005, petitioner's motion for certificate of appealability was denied. See Docket No. 63. Now before the Court is petitioner's Motion for Leave to Appeal In Forma Pauperis (Docket No. 65). In support of the motion, petitioner submitted an affidavit accompanied by a copy of his prison account statement. See Docket No. 66.

DISCUSSION

Generally, "any court of the United States may authorize the commencement, prosecution or defense of any ... appeal ... without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor." 28 U.S.C. § 1915(a)(1). A party that desires to proceed in forma pauperis on an appeal from the dismissal of a habeas corpus petition must typically file a motion with the district court and attach an affidavit explaining why the court should allow him to do so. See Fed. R. App. P. 24(a)(1).

Petitioner initially filed an Application to Proceed Without Prepayment of Fees. See Docket No. 1. However, the docket indicates that the \$5.00 filing fee was paid at the time this action was filed, see Docket No. 4, and the fee-waiver application was subsequently terminated from the docket. See Docket (Jan. 25, 2005 docket entry).¹

The instant motion reveals that petitioner has been incarcerated for over forty-one (41) months. The affidavit accompanying his motion reveals that his only source of income is gifts of money from family that is spent on "soap, toothpaste,

¹Because petitioner's initial application to proceed without prepayment of fees was never granted, the Court will review the instant motion pursuant to Fed. R. App. P. 24(a)(1).

paper, stamps, etc..." See Docket No. 66-1 (affidavit). Petitioner's inmate transaction report reveals a balance of \$101.52. On this record, I find that petitioner is unable to pay the cost of proceeding with his appeal and is entitled to proceed in forma pauperis.

ORDER

Accordingly, it is hereby

ORDERED, that petitioner's Motion for Leave to Appeal In Forma Pauperis (Docket No. 65) is granted; and it is further

ORDERED, that the Clerk transmit this Order as well as Docket Nos. 62-69 as a supplemental record to the First Circuit Court of Appeals.

SO ORDERED.

February 2, 2006
DATE

/s/ Joseph L. Tauro

JOSEPH L. TAURO
UNITED STATES DISTRICT JUDGE